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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 (HONORABLE DANA M. SABRAW)

13 UNITED STATES OF AMERICA,) Case No. 08CR2715-DMS
14 Plaintiff,)
15 v.) Date: September 19, 2008
16 MANUEL CARRANZA-SOTO (2),) Time: 11:00 a.m.
17 Defendant.)
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TO: KAREN P. HEWITT, UNITED STATES ATTORNEY, and
JOSEPH J.M. ORABONA, ASSISTANT UNITED STATES ATTORNEY

PLEASE TAKE NOTICE that on Friday, September 19, 2008, at 11:00
a.m., or as soon thereafter as counsel may be heard, the defendant,
Manuel Carranza-Soto, by and through his attorney, Gary P. Burcham, will
ask this Court to enter an order granting the motions listed below.

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MOTIONS

Manuel Carranza-Soto, the defendant in this case, by and through his attorney, Gary P. Burcham, pursuant to the Amendments to the United States Constitution, Fed. R. Crim. P., and all other applicable statutes, case law and local rules, hereby moves this Court for an order:

- 1) to compel discovery;
- 2) to file further motions.

8 These motions are based upon the instant motions and notice of
9 motions, the attached statement of facts and memorandum of points and
10 authorities, and any and all other materials that may come to this
11 Court's attention at the time of the hearing on these motions.

Respectfully submitted,

Dated: September 3, 2008

/s/ Gary P. Burcham

GARY P. BURCHAM

Attorney for Manuel Carranza-Soto

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) U.S.D.C. No. 08CR2715-DMS
Plaintiff-Appellee,) CERTIFICATE OF SERVICE
v.)
MANUEL CARRANZA-SOTO,)
Defendant-Appellant.)

IT IS HEREBY CERTIFIED THAT:

I, GARY P. BURCHAM, am a citizen of the United States and am at least eighteen years of age. My business address is 964 Fifth Avenue, Suite 300, San Diego, CA 92101.

12 I am not a party to the above-entitled action. I have caused
13 service of Defendant's Motion For Discovery and For Leave To File Further
14 Motions on the following party or parties by electronically filing the
15 foregoing with the Clerk of the District Court using its ECF System,
16 which electronically notifies him/her.

Joseph J.M. Orabona, Esq.
United States Attorney's Office
Border Crimes Unit
880 Front Street
San Diego, CA 92101

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 3, 2008.

/s/ Gary P. Burcham
GARY P. BURCHAM

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10 (HONORABLE DANA M. SABRAW)

11 UNITED STATES OF AMERICA,) Case No. 08CR2715-DMS
12 Plaintiff,)
13 v.) **STATEMENT OF FACTS AND
14 MANUEL CARRANZA-SOTO (2),) MEMORANDUM OF POINTS AND
15 Defendant.) AUTHORITIES IN SUPPORT
16) OF DEFENDANT'S MOTIONS
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STATEMENT OF FACTS

18 The following statement of facts is based, in part, on materials
19 received from the government. Mr. Carranza-Soto does not accept this
20 statement of facts as his own, and reserves the right to take a contrary
21 position at motions hearing and trial. The facts alleged in these motions
22 are subject to amplification and/or modification at the time these motions
23 are heard.

24 On July 30, 2008, Border Patrol Agent Perez was performing
25 "line-watch" duties near the San Diego/Imperial County line when he saw
26 a Ford Explorer drive past. The driver of the Explorer was wearing a
27 camouflage hat and shirt. Perez communicated what he saw to other agents
28 in the area. Approximately 15 minutes later, Border Patrol Agent Velez

1 saw this vehicle drive past his location going south, then subsequently
2 saw the same vehicle go past him driving north. Agent Velez believed this
3 was suspicious because he knew of no destination in that area that the
4 vehicle could have reached and then departed from in that amount of time.
5 Agent Velez communicated his observations to other agents in the area.

6 Border Patrol Agent Lopez then saw the Explorer approaching his
7 position and noticed that the vehicle slowed as it approached him. When
8 the vehicle passed, Lopez noticed the driver was sitting in a straight
9 position, avoiding eye contact, and gripping the steering wheel with both
10 hands. After the vehicle passed his location, Agent Lopez said the
11 vehicle revved its engine and accelerated quickly.

12 Agent Lopez pulled his vehicle in behind the Explorer and
13 activated his emergency lights to stop the vehicle. The Explorer made a
14 turn onto Highway 78, then failed to yield for the stop, eventually
15 running off the road into a ditch. Several persons ran away from the
16 vehicle, while the person alleged to be the driver, lead-defendant
17 Venancio Rojas-Pedroza, was wedged between the driver's seat and the roof
18 of the vehicle. One of the material witnesses who was caught running away
19 from the Explorer allegedly identified Mr. Carranza-Soto, who was a
20 passenger in the vehicle, as the person who had guided the group across
21 the border on foot.

22 Rojas-Pedroza, along with Mr. Carranza-Soto, were indicted on
23 four counts of bringing in aliens (two counts for financial gain and two
24 counts for failing to present), as well as aiding and abetting. In a
25 superseding indictment, the government added two additional charges of
26 transportation of illegal aliens, bringing the total number of counts to
27 six.

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I.

MOTION TO COMPEL DISCOVERY

Mr. Carranza-Soto has yet to receive any discovery in this case.

4 He therefore moves for the production of the following items by the
5 government. This request is not limited to those items that the
6 prosecutor knows of, but rather includes all discovery listed below that
7 is in the custody, control, care, or knowledge of any "closely related
8 investigative [or other] agencies" under United States v. Bryan, 868 F.2d
9 1032 (9th Cir. 1989):

(1) The Defendant's Statements. Under Fed. R. Crim. P. 16

11 (a) (1) (A) the defendant is entitled to disclosure all copies of any
12 written or recorded statements made by the defendant; the substance of any
13 statements made by the defendant which the government intends to offer in
14 evidence at trial; any recorded testimony of the defendant before the
15 grand jury; any response by the defendant to interrogation; the substance
16 of any oral statements which the government intends to introduce at trial,
17 and any written summaries of the defendant's oral statements contained in
18 the handwritten notes of the government agent; any response to any Miranda
19 warnings which may have been given to the defendant (see United States v.
20 McElroy, 697 F.2d 459 (2d Cir. 1982)); and any other statements by the
21 defendant that are discoverable under Fed. R. Crim. P. 16(a) (1) (A). The
22 Advisory Committee Notes as well as the 1991 amendments to Rule 16 make
23 it clear that the Government must reveal all the defendant's statements,
24 whether oral or written regardless of whether the Government intends to
25 introduce those statements;

(2) Arrest Reports, Notes and Dispatch Tapes. The defendant

27 also specifically requests that all arrest reports, notes and dispatch or
28 any other tapes that relate to the circumstances surrounding his arrest

1 or any questioning, if such reports have not already been produced in
2 their entirety, be turned over to him. This request includes, but is not
3 limited to, any rough notes, records, reports, transcripts or other
4 documents in which statements of the defendant or any other discoverable
5 material is contained. This is all discoverable under Fed. R. Crim. P.
6 16(a)(1)(A) and Brady v. Maryland, 373 U.S. 83 (1963). See also United
7 States v. Johnson, 525 F.2d 999 (2d Cir. 1975); United States v. Lewis,
8 511 F.2d 798 (D.C. Cir. 1975); United States v. Pilnick, 267 F. Supp. 791
9 (S.D.N.Y. 1967); Loux v. United States, 389 F.2d 911 (9th Cir. 1968).
10 Arrest reports, investigator's notes, memos from arresting officers,
11 dispatch tapes, sworn statements, and prosecution reports pertaining to
12 the defendant are available under Fed. R. Crim. P. 16(a)(1)(B) and (C),
13 Fed. R. Crim. P. 26.2 and 12(I);

14 (3) Reports of Scientific Tests or Examinations. Pursuant to
15 Fed. R. Crim. P. 16(D), the defendant requests the reports of all tests
16 and examinations conducted upon the evidence in this case, including but
17 not limited to the scientific chemical testing done upon the drugs seized
18 in this case to determine if it was indeed marijuana and any fingerprint
19 testing done upon any evidence seized in this case, that is within the
20 possession, custody, or control of the government, the existence of which
21 is known, or by the exercise of due diligence may become known, to the
22 attorney for the government, and which are material to the preparation of
23 the defense or are intended for use by the government as evidence in chief
24 at the trial;

25 (4) Brady Material. The defendant requests all documents,
26 statements, agents' reports, and tangible evidence favorable to the
27 defendant on the issue of guilt and/or which affects the credibility of
28 the government's case. Impeachment as well as exculpatory evidence falls

1 within Brady's definition of evidence favorable to the accused. United
2 States v. Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427 U.S.
3 97 (1976);

4 (5) Any Information that May Result in a Lower Sentence under
5 the United States Sentencing Guidelines (U.S.S.G.). As discussed above,
6 this information is discoverable under Brady v. Maryland. This request
7 includes any cooperation or attempted cooperation by the defendant, as
8 well as any information that could affect any base offense level or
9 specific offense characteristic under Chapter Two of the U.S.S.G. Also
10 included in this request is any information relevant to a Chapter Three
11 adjustment, a determination of the defendant's criminal history, or any
12 other application of the U.S.S.G.;

13 (6) The Defendant's Prior Record. Evidence of prior record is
14 available under Fed. R. Crim. P. 16(a)(1)(B);

15 (7) Any Proposed 404(b) Evidence. Evidence of prior similar
16 acts is discoverable under Fed. R. Crim. P. 16(a)(1)(C) and Fed. R. Evid.
17 404(b) and 609. In addition, under Fed. R. Evid. 404(b), "upon request of
18 the accused, the prosecution . . . shall provide reasonable notice in
19 advance of trial . . . of the general nature . . ." of any evidence the
20 government proposes to introduce under Fed. R. Evid. 404(b) at trial. The
21 defendant requests that such notice be given three weeks before trial in
22 order to give the defense time to adequately investigate and prepare for
23 trial;

24 (8) Evidence Seized. Evidence seized as a result of any search,
25 either warrantless or with a warrant, is discoverable under Fed. R. Crim.
26 P. 16(a)(1)(C); the defendant specifically requests that all dispatch
27 tapes or any other physical evidence that may be destroyed, lost, or
28 otherwise put out of the possession, custody, or care of the government

1 and which relate to the arrest or the events leading to the arrest in this
2 case be preserved. This request includes, but is not limited to, any
3 samples used to run any scientific tests, any narcotics, and any evidence
4 seized from any third party. It is requested that the government be
5 ordered to question all the agencies and individuals involved in the
6 prosecution and investigation of this case to determine if such evidence
7 exists, and if it does exist, to inform those parties to preserve any such
8 evidence;

9 (9) Tangible Objects. The defendant requests, under Fed. R.
10 Crim. P. 16(a)(2)(C), the opportunity to inspect and copy as well as test,
11 if necessary, all other documents and tangible objects, including
12 photographs, books, papers, documents, photographs, of building or places
13 or copies of portions thereof which are material to the defense or
14 intended for use in the government's case-in-chief, or were obtained from
15 or belong to the defendant;

21 (11) Impeachment Evidence. The defendant requests any evidence
22 that any prospective government witness has engaged in any criminal act,
23 whether or not resulting in a conviction, and whether any witness has made
24 a statement favorable to the defendant. See Fed. R. Evid. 608, 609 and
25 613. Such evidence is discoverable under Brady v. Maryland. See Strifler
26 (witness' prior record); Thomas v. United States, 343 F.2d 49 (9th Cir.
27 1965) (evidence that detracts from a witness' credibility);

(12) Evidence of Criminal Investigation of Any Government

1 Witness. The defendant requests any evidence that any prospective witness
 2 is under investigation by federal, state or local authorities for any
 3 criminal conduct. United States v. Chitty, 760 F.2d 425 (2d Cir.) cert.
 4 denied, 474 U.S. 945 (1985);

5 (13) Evidence Affecting Perception, Recollection, Ability to
 6 Communicate, or Truth Telling. The defense requests any evidence,
 7 including any medical or psychiatric report or evaluation, tending to show
 8 that any prospective witness' ability to perceive, remember, communicate,
 9 or tell the truth is impaired; and any evidence that a witness has ever
 10 used narcotics or other controlled substance, or has ever been an
 11 alcoholic. Strifler; Chavis v. North Carolina, 637 F.2d 213, 224 (4th
 12 Cir. 1980);

13 (14) Witness Addresses. The defendant requests the name and
 14 last known address of each prospective government witness. See United
 15 States v. Napue, 834 F.2d 1311 (7th Cir. 1987); United States v. Tucker,
 16 716 F.2d 576 (9th Cir. 1983) (failure to interview government witnesses
 17 by counsel is ineffective); United States v. Cook, 608 F.2d 1175, 1181
 18 (9th Cir. 1979) (defense has equal right to talk to witnesses). The
 19 defendant also requests the name and last known address of every witness
 20 to the crime or crimes charged (or any of the overt acts committed in
 21 furtherance thereof) who will not be called as a government witness.
 22 United States v. Cadet, 727 F.2d 1453 (9th Cir. 1984);

23 (15) Name of Witnesses Favorable to the Defendant. The
 24 defendant requests the name of any witness who made an arguably favorable
 25 statement concerning the defendant or who could not identify him or who
 26 was unsure of his identity, or participation in the crime charged.
 27 Jackson v. Wainwright, 390 F.2d 288 (5th Cir. 1968); Chavis v. North
 28 Carolina; Jones v. Jago, 575 F.2d 1164, 1168 (6th Cir. 1978); Hudson v.

1 | Blackburn, 601 F.2d 785 (5th Cir. 1979), cert. denied, 444 U.S. 1086
 2 | (1980);

3 | (16) Statements Relevant to the Defense. The defendant requests
 4 | disclosure of any statement that may be "relevant to any possible defense
 5 | or contention" that he might assert. United States v. Bailleaux, 685 F.2d
 6 | 1105 (9th Cir. 1982);

7 | (17) Jencks Act Material. The defense requests all material to
 8 | which defendant is entitled pursuant to the Jencks Act, 18 U.S.C. § 3500,
 9 | reasonably in advance of trial, including dispatch tapes. A verbal
 10 | acknowledgment that "rough" notes constitute an accurate account of the
 11 | witness' interview is sufficient for the report or notes to qualify as a
 12 | statement under §3500(e)(1). Campbell v. United States, 373 U.S. 487, 490-
 13 | 92 (1963). In United States v. Boshell, 952 F.2d 1101 (9th Cir. 1991),
 14 | the Ninth Circuit held that when an agent goes over interview notes with
 15 | the subject of the interview the notes are then subject to the Jencks Act.
 16 | The defense requests pre-trial production of Jencks material to expedite
 17 | cross-examination and to avoid lengthy recesses during trial;

18 | (18) Giglio Information. Pursuant to Giglio v. United States,
 19 | 405 U.S. 150 (1972), the defendant requests all statements and/or
 20 | promises, express or implied, made to any government witnesses, in
 21 | exchange for their testimony in this case, and all other information which
 22 | could arguably be used for the impeachment of any government witnesses;

23 | (19) Personnel Records of Government Officers Involved in the
 24 | Arrest. The defendant requests all citizen complaints and other related
 25 | internal affairs documents involving any of the immigration officers or
 26 | other law enforcement officers who were involved in the investigation,
 27 | arrest and interrogation of him, pursuant to Pitchess v. Superior Court,
 28 | 11 Cal.3d 531, 539 (1974). Because of the sensitive nature of these

1 documents, defense counsel will not be able to procure them from any other
2 source;

3 (20) Government Examination of Law Enforcement Personnel Files.

4 The defendant requests that the government examine the personnel files and
5 any other files within its custody, care or control, or which could be
6 obtained by the government, for all testifying witnesses, including
7 testifying officers. The defendant requests that these files be reviewed
8 by the government attorney for evidence of perjurious conduct or other
9 like dishonesty, or any other material relevant to impeachment, or any
10 information that is exculpatory, pursuant to its duty under United States
11 v. Henthorn, 931 F.2d 29 (9th Cir. 1991), cert. denied, 503 U.S. 972
12 (1992). The obligation to examine files arises by virtue of the defense
13 making a demand for their review: the Ninth Circuit in Henthorn remanded
14 for in camera review of the agents' files because the government failed
15 to examine the files of agents who testified at trial. This Court should
16 therefore order the government to review all such files for all testifying
17 witnesses and turn over any material relevant to impeachment or that is
18 exculpatory to the defendant prior to trial. The defendant specifically
19 requests that the prosecutor, not the law enforcement officers, review the
20 files in this case. The duty to review the files, under Henthorn, should
21 be the prosecutor's and not the officers'. Only the prosecutor has the
22 legal knowledge and ethical obligations to fully comply with this request.

23 (21) Notice and a Written Summary of Any Expert Testimony.

24 Under Rule 16(a)(1)(E), effective December 1, 1993, "[a]t the defendant's
25 request, the government shall disclose to the defendant a written summary
26 of testimony the government intends to use under Rules 702, 703 or 705 of
27 the Federal Rules of Evidence during its case-in-chief at trial. This
28 summary must describe the witness' opinions, the basis and the reasons

1 therefore, and the witness' qualifications." The defendant also
2 specifically requests the government give him a written summary and notice
3 of any expert testimony the government intends to introduce.

4 **II.**

5 **REQUEST FOR LEAVE TO FILE FURTHER MOTIONS**

6 Mr. Carranza-Soto likely will file substantive motions in this
7 case once discovery has been provided. Therefore, defense counsel
8 requests the opportunity to file further motions based upon information
9 gained from the discovery requested herein.

10 **III.**

11 **CONCLUSION**

12 For the foregoing reasons, it is respectfully requested that the
13 Court grant the above motions.

14 Respectfully submitted,

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16 Dated: September 3, 2008

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/s/ Gary P. Burcham
GARY P. BURCHAM
Attorney for Manuel Carranza-Soto

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